

Gautier Planning Commission

Regular Meeting Agenda

August 7, 2013

GPC #14-15-AP

5608 Carrie St.: Staff Appeal

VII. NEW BUSINESS

A. QUASI-JUDICIAL

1. REQUEST FOR AN APPEAL TO STAFF DETERMINATION OF SECTION 13.3, NONCONFORMING USE, REGARDING A RENTAL MOBILE HOME IN R-1 ZONING DISTRICT, 5608 CARRIE ST (ROBERT DALE MALONE, OWNER) (GPC CASE #14-15-AP)

CITY OF GAUTIER STAFF REPORT

To: Chairman and Members, Planning Commission

From: Erica Greene, City Planner

Through: Chandra Nicholson, Planning & Economic Development Director

Date: July 25, 2014

Subject: Appeal to Staff Decision Regarding Allowing a Mobile Home to remain and allow utilities to be restored in the R-1 Low Density Single Family Residential zoning district (GPC Case No. 14-15-AP)

REQUEST:

The Economic Development/Planning Department has received an Appeal to Staff Decision from Robert Malone Jr. The appellant contests the code enforcement officer's determination of a "cessation of use" pursuant to UDO Section 13.3.1, and argues that the property remains a legal nonconforming use.

The lot is located at 5608 Carrie Street, PID #85260022.000. The application fee of \$100 was paid on July 11, 2014. All public notice requirements have been met. The city attorney has reviewed the application as legally sufficient for consideration.

BACKGROUND:

The request property is located in the R-1 Low Density Single Family Residential zoning district which only allows for single-family detached dwelling units and related recreation facilities which complement the area.

The appellant/property owner states that the mobile home has existed prior to the R-1 zoning designation. The mobile home is a rental property previously occupied by the appellant's father, now deceased.

DISCUSSION:

The code enforcement officer has investigated code complaints on the property for the last three years. Multiple attempts at written correspondence were unanswered. A temporary disconnect of utilities was requested on Feb 2, 2013. On or about June 26th, the owner requested an inspection to re-establish utilities. The code enforcement officer had logged the abandoned mobile home during this time. Based on the cessation of use with no utilities and the dwelling unoccupied, the building inspector denied the owner's request.

General Features:

Location: Lot 30 & 31, Driftwood Park Subdivision (See Exhibit A)

Principal Arterial: Highway 90

Gross Lot Acreage: approximately 0.00 acres

Potable Water and Wastewater Services: Existing from City

Zoning and Land Use:

Current zoning of the applicant's property: R-1 Low Density Single Family Residential

Current Surrounding Zoning: R-1 Low Density Single Family Residential

Current Surrounding Existing Land Use: Very Low to Low Density Residential to the north, east and west (See Exhibit C)

Comprehensive Plan Future Land Use Designation: Single Unit Residential (See Exhibit D)

DETERMINATION OF APPLICABLE LAW:

SECTION 13.3: Nonconforming Use of Structures and Premises

A nonconforming use shall not be expanded, extended or enlarged in floor area, or changed to another nonconforming use. Structures housing a nonconforming use may be improved or extended to an extent which does not exceed fifty (50) percent of the market value as appraised by the Jackson County Tax Assessor's appraisal on record.

13.3.1 Termination of Nonconforming Use

A nonconforming building, structure, dwelling, or land use or portion thereof, existing at the time of adoption of these regulations which is or hereafter becomes vacant for any reason, for a

period in excess of sixty (60) consecutive days any subsequent use shall conform to the regulations of this Ordinance for the district in which it is located.

SECTION 3.7: Appeals

Persons aggrieved with decisions of administrative staff or decisions of the Planning Commission may appeal the decisions

3.7.1 Appeal of Administrative Decision

Appeals from written administrative decisions of the Economic Development Director in the administration and enforcement of the provisions of this Ordinance shall be heard by the City Planning Commission. A "Notice of Appeal" in the form of a letter with necessary documentation shall be filed within ten (10) days from the date of the decision with the Economic Development Director outlining the circumstances and the ground of the appeal. The Economic Development Director shall place the Notice of Appeal on the agenda of the Planning Commission meeting. Appropriate fees shall apply.

Upon hearing such appeal the Planning Commission may, in conformance with the provisions of these regulations, reverse or affirm, or may modify, wholly or partially, any order, requirement, decision, or determination of the Economic Development Director and/or his staff.

RECOMMENDATION:

The planning commission shall utilize Section 13.3 in their determination of the appropriateness of the appeal.

Based on the appropriateness of the request and the information provided, the Commission may:

- a) Reverse the Staff determination to not allow the conforming use to continue;
- b) Affirm the Staff determination that a cessation of use has occurred.

ATTACHMENTS:

1. Applicant's Exhibit 1 – Application
2. City's Exhibit A – Location Map
3. City's Exhibit B - Existing Zoning Map

4. City's Exhibit C – Existing Land Use Map
5. City's Exhibit D – Future Land Use Map

GAUTIER, MISSISSIPPI
ECONOMIC DEVELOPMENT/PLANNING DEPARTMENT
PUBLIC HEARING APPLICATION

Public Hearing Number

PERMIT REQUESTED:

TO BE HEARD BY GAUTIER PLANNING COMMISSION:		FEE:
Change in Zoning District	_____	\$300.00
Major Development	_____	No Fee
Home Occupation	_____	\$100.00
Variance (greater than 30%)	_____	\$100.00
Appeal to Staff Decision	<u>X</u>	\$100.00

TO BE HEARD BY ECONOMIC DEVELOPMENT/PLANNING DIRECTOR ON STAFF REVIEW:		FEE:
Home Occupation	_____	\$100.00
Variance (30% or less)	_____	\$100.00

See Attachment for Application Procedure

Name of Applicant: Robert Dale Malone Jr.
Name of Business: _____ Phone: 601-433-1039
Business Address: 158 Tressie's Lane Mailing Address (if Different): 158 Tressie's Lane
Laurel, MS 39443 Laurel, MS 39443
Reason for request, location and intended use of Property: Property @ 5608 Carrie Street, Gautier MS
request to turn power back on, see attached letter
ATTACHMENTS REQUIRED AS APPLICABLE:

1. Diagram of intended use, showing dimensions and distances of property, building with setbacks, parking spaces, entrances and exits.
2. Legal descriptions and street address.
- X 3. A detailed project narrative.
4. Copy of protective covenants or deed restrictions, if any.
5. Copies of approvals, or requests for approval, from other agencies, such as, but not limited to, the Mississippi State Department of Health, U.S. Army Corp of Engineers, Mississippi Department of Environmental Quality and Department of Marine Resources.
6. Any other information requested by the Economic Development/Planning Director and/or members of the Site Plan Review Committee.

Signature of Applicant: Robert Dale Malone Jr.
Date of Application: 6/23/2014

FOR OFFICE USE ONLY	
Date Received	<u>7/1/14</u> Verify as Complete _____
Fee Amount Received	<u>\$100 - Check</u>
Initials of Employee Receiving Application	<u>SB</u>

ADDRESS LISTING OF PROPERTY OWNERS

TYPE OF PUBLIC HEARING REQUEST:

CHANGE IN ZONING DISTRICT	- 500 FT.
APPEAL TO STAFF DECISION	-250 FT.
HOME OCCUPATION	ADJOINING
VARIANCE	ADJOINING

APPLICANT Robert Dale Malone Jr. NO. _____

Names and Addresses of Property Owners within ____ 250 feet, ____ 500 feet, or ____ adjoining perimeter of subject property:

NAME _____

ADDRESS

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Gautier, Mississippi

PROCEDURE FOR PUBLIC HEARING APPLICATION

- A. A Public Hearing conducted by the Gautier Planning Commission is required on the following applications for permits:
- (1) Home Occupations (*if appealed, or if Economic Development/Planning Director chooses to hold public hearing.*)
 - (2) Variances (*other than those for off-street parking spaces and setbacks from property lines that are 30% or less*)
 - (3) Zoning applications that would change the City of Gautier Zoning Map if approved.
 - (4) Wireless Telecommunication Facilities.
- B. Complete front of the application form.
- (1) Applicant must be owner of property or agent of the owner.
- C. Submit fee to cover publication and handling costs as follows:
- (1) To Be Heard by Gautier Planning Commission:
 - (a) Change of Zoning Districts.....\$300.00
 - (b) Major Development.....No Fee
 - (c) Home Occupations\$100.00
 - (d) Variance.....\$100.00
 - (e) Appeal to Staff Decision.....\$100.00
 - 2) To Be Heard by Economic Development/Planning Director as Staff Review:
 - (a) Home Occupations\$100.00
 - (b) Variance\$100.00
- D. Public Notice will be published in a local paper of general circulation not less than fifteen (15) days prior to the date for the public meeting before the Planning Commission. All property owners, within the appropriate notification distance from the property under consideration, will be notified by first class mail. Such notices will be mailed not less than fifteen (15) days prior to the public hearing. If action is needed before the City Council, the Economic Development/Planning Director will submit the findings of fact and the recommendations of the Planning Commission to the City Clerk not later than one (1) week prior to the next available Council meeting.
- E. The Gautier City Council will act on the application at the next available time on their agenda before final approval or rejection of application.
- F. If approved, application for the proper permit for the use intended, shall be made through the City of Gautier Economic Development/Planning Department.

STATE OF MISSISSIPPI

MISSISSIPPI STATE DEPARTMENT OF HEALTH VITAL RECORDS



10970571

FILING DATE		CERTIFICATE OF DEATH		STATE FILE NUMBER	
DATE		STATE OF MISSISSIPPI		123- 2013-071549	
1. DECEDENT'S LEGAL NAME (First, Middle, Last)		2. SEX		3. HOUR OF DEATH	
Robert Dale Malone Sr.		Male		245 A	
4. RACE (Check one or more races to indicate what the decedent considered himself or herself to be)		5. DATE OF BIRTH (Month, Day, Year)		6. DATE OF DEATH (Month, Day, Year)	
<input checked="" type="checkbox"/> White <input type="checkbox"/> Black or African American <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Samoan <input type="checkbox"/> Asian Indian <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Other Asian (Specify) <input type="checkbox"/> American Indian or Alaska Native (Name of the enrolled tribe or principal tribe) <input type="checkbox"/> Other (Specify)		SEPTEMBER 16, 1942		9-30-13	
7. BIRTH PLACE (State or Foreign Country)		8. PLACE OF DEATH (Check only one box)		9. ZIP CODE	
MISSISSIPPI		<input type="checkbox"/> Decedent's home <input type="checkbox"/> Other (Specify)		39443	
10. AGE AT LAST BIRTHDAY		11. DEATH OCCURRED IN A HOSPITAL		12. SURVIVING SPOUSE (If female, give maiden name)	
71		<input type="checkbox"/> Only if under 1 year <input type="checkbox"/> Only if under 1 day <input type="checkbox"/> Only if under 1 hour <input type="checkbox"/> Only if under 1 min		YES	
13. FACILITY NAME (If not a facility, give street address, route number, or other location)		14. DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL		15. COUNTY OF DEATH	
1237 Lower Myrick Rd		<input type="checkbox"/> Hospice facility <input type="checkbox"/> Nursing home/Long term care facility <input type="checkbox"/> Decedent's home <input type="checkbox"/> Other (Specify)		JONES	
16. DECEDENT'S EDUCATION - Check the box that best describes the highest degree or level of school completed in days of death		17. SOCIAL SECURITY NUMBER		18. USUAL OCCUPATION (Kind of work done most of working life)	
<input type="checkbox"/> 8 th grade or less <input type="checkbox"/> 9 th - 12 th grade, no diploma <input checked="" type="checkbox"/> High school graduate or GED completed <input type="checkbox"/> Some college, no degree <input type="checkbox"/> Associate degree (e.g., AA, AS) <input type="checkbox"/> Bachelor's degree (e.g., BA, AB, BS) <input type="checkbox"/> Master's degree (e.g., MA, MS, MEd, MEng, MBA) <input type="checkbox"/> Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LL.D., JD) <input type="checkbox"/> Unknown		427-82-9787		MACHINIST/SALESMAN	
19. MARITAL STATUS AT TIME OF DEATH		20. RESIDENCE - STATE		21. CITY OR TOWN	
<input type="checkbox"/> Married <input type="checkbox"/> Married, but separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Never married <input type="checkbox"/> Unknown		MISSISSIPPI		LAUREL	
22. DECEDENT'S HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the "No" box if decedent is not Spanish/Hispanic/Latino.		23. CITY OR TOWN		24. STREET AND NUMBER OR RURAL LOCATION (Include apartment number)	
<input checked="" type="checkbox"/> No, Not Spanish/Hispanic/Latino <input type="checkbox"/> Yes, Mexican, Mexican American, Chicano <input type="checkbox"/> Yes, Puerto Rican <input type="checkbox"/> Yes, Cuban <input type="checkbox"/> Yes, other Spanish/Hispanic/Latino (Specify)		LAUREL		1237 LOWER MYRICK RD.	
25. FATHER'S NAME (First, Middle, Last)		26. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)		27. INSIDE CITY LIMITS (Yes or No)	
CHARLES WALLACE MALONE		LOUISE SUMRALL		NO	
28. INFORMANT - NAME (Type or print)		29. RELATIONSHIP TO DECEDENT		30. MAILING ADDRESS (Street and number, City or town, State, ZIP Code)	
ROBERT DALE MALONE, JR.		SON		158 TRESSIE LANE, LAUREL, MS 39443	
31. DISPOSITION OF BODY (Specify: Burial, Cremation, Removal, etc.)		32. CEMETERY/CREMATORY - NAME		33. FUNERAL DIRECTOR - SIGNATURE AND LICENSE NUMBER	
BURIAL		MEMORIAL GARDENS		 Ernest Hollingsworth 0344	
34. FUNERAL HOME (Who first assumed custody of body)		35. FUNERAL HOME LICENSE NUMBER		36. MAILING ADDRESS (Street and number, City or town, State, ZIP Code)	
MEMORY CHAPEL 345		FE 0005		P O BOX 674, LAUREL, MS 39441	
37. FUNERAL HOME (If body was transferred prior to disposition)		38. MAILING ADDRESS (Street and number, City or town, State, ZIP Code)		39. PRONOUNCED DEAD (Month, Day, Year)	
				ON 9-30-13 AT 245 A	
40. PERSON WHO PRONOUNCED DEATH - NAME AND TITLE (Type or print)		41. MAILING ADDRESS (Street and number, City or town, State, ZIP Code)		42. PRONOUNCED DEAD (Time)	
David McCauley REMT-P		912 Sunflower Dr. Laurel, MS 39440		AT 245 A	
43. NAME OF CERTIFYING PHYSICIAN OR CORONER (Type or print)		44. MAILING ADDRESS (Street and number, City or town, State, ZIP Code)		45. SIGNATURE	
Ernest Hollingsworth				 Ernest Hollingsworth	
46. DATE SIGNED (Month, Day, Year)		47. STATE LICENSE NUMBER		48. DATE SIGNED (Month, Day, Year)	
10-2-13		MD DO		10-2-13	
49. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or print)		50. DATE SIGNED (Month, Day, Year)		51. DATE SIGNED (Month, Day, Year)	
				10-2-13	
52. CAUSE OF DEATH PART I - Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, shock, or heart failure without showing the etiology. List only one cause on each line. DO NOT USE ABBREVIATIONS.					
(a) Congestive heart failure (b) respiratory distress (c) Chronic obstructive pulmonary disease					
53. PART II: OTHER SIGNIFICANT CONDITIONS - Conditions contributing to death but not resulting in the underlying cause given in PART I.					
54. DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input type="checkbox"/> No <input type="checkbox"/> Unknown					
55. IF FEMALE: <input type="checkbox"/> NOT pregnant within the past year <input type="checkbox"/> PREGNANT at the time of death <input type="checkbox"/> NOT pregnant BUT PREGNANT WITHIN 42 DAYS OF DEATH					
56. ACCIDENT, SUICIDE, HOMICIDE, PENDENT INVESTIGATION, OR UNDETERMINED					
57. IF TRANSPORTATION INJURY, SPECIFY					
<input type="checkbox"/> Driver/Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Other (Specify)					
58. INJURY AT WORK (Yes or No)					
59. PLACE OF INJURY (Specify Home, Farm, Street, Factory, Office building, etc.)					
60. LOCATION					
61. DESCRIBE HOW OR BY WHAT MEANS INJURY OCCURRED					

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE CERTIFICATE ON FILE IN THIS OFFICE

10/14/2013

Judy Moulder
STATE REGISTRAR

WARNING: A REPRODUCTION OF THIS DOCUMENT RENDERS IT VOID AND INVALID. DO NOT ACCEPT UNLESS EMBOSSED SEAL OF THE MISSISSIPPI STATE BOARD OF HEALTH IS PRESENT. IT IS ILLEGAL TO ALTER OR COUNTERFEIT THIS DOCUMENT.

VERIFY PRESENCE OF WATERMARK HOLD TO LIGHT TO VIEW

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



06/23/2014

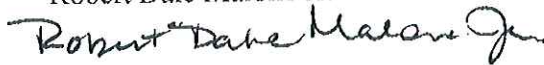
Robert Dale Malone Jr.
158 Tressie Lane
Laurel, MS 39443
601-580-1391
601-433-1039
dmalone@megagate.com

To
Gautier Panning Commission, Gautier City Council, the Economic Development/Planning
Director

Dear Sir/Madam,

I am writing this letter to request the permission for electricity to be resumed at the property at 5608 Carrie Street, Gautier MS. This property has been in my family for many years now and used for the purpose of fishing, gaming, and just a home away from home. This is not a rental property. My father Robert Dale Malone Sr was very sick during the year 2013. We had many hospital stays which caused a hardship on our family during this time, which unfortunately caused a lapse in the electricity or water being used. He passed away on September 29, 2013. This property is located within 250ft south of Martin Bluff Road. I am willing to make any improvements or adjustments that the planning commission requires. Please help us keep our second home.

Thank you,
Robert Dale Malone Jr.



13.2.6 Major Damage to Nonconforming Structures

Should a nonconforming structure be destroyed or damaged by any means to an extent that would be in excess of fifty percent (50%) of the true value as determined by the Jackson County Tax Assessor it shall not be reconstructed or use made of except in conformity with the provisions of these ordinances, however, this provision shall not apply to any nonconforming use which at the time of destruction or damage is owned by the same persons or entity who was the owner at the time of the passage of the Unified Development Ordinance, dated December 7, 2010.

SECTION 13.3: Nonconforming Use of Structures and Premises

A nonconforming use shall not be expanded, extended or enlarged in floor area, or changed to another nonconforming use. Structures housing a nonconforming use may be improved or extended to an extent which does not exceed fifty percent (50%) of the market value as appraised by the Jackson County Tax Assessor's appraisal on record.

13.3.1 Termination of Nonconforming Use

A nonconforming building, structure, dwelling, or land use or portion thereof, existing at the time of adoption of these regulations which is or hereafter becomes vacant for any reason, for a period in excess of sixty (60) consecutive days any subsequent use shall conform to the regulations of this Ordinance for the district in which it is located.

SECTION 13.4: Catastrophic Provisions

In the event of a natural disaster, which is determined by the State of Mississippi or the United States Government; any damaged nonconforming uses may be continued, where such continuance is declared to be in the public interest by the City Council.

SECTION 13.5: Outdoor Advertising and Structures

When any commercial advertising structure or billboard, being an outdoor sign whereby the advertising content is for lease or rent, that is legally in existence either as a conforming sign or a nonconforming sign that is required to be removed for public purposes, just compensation shall be paid for the removal thereof according to the terms and conditions as found in the laws of the State of Mississippi controlling outdoor advertising.

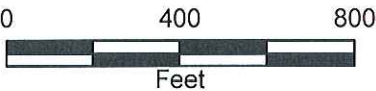
SECTION 13.6: Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. Variance of yard requirements shall be obtained only through action of the Planning Commission.

EXHIBIT A

Location Map
5608 Carrie Street
Staff Appeal

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

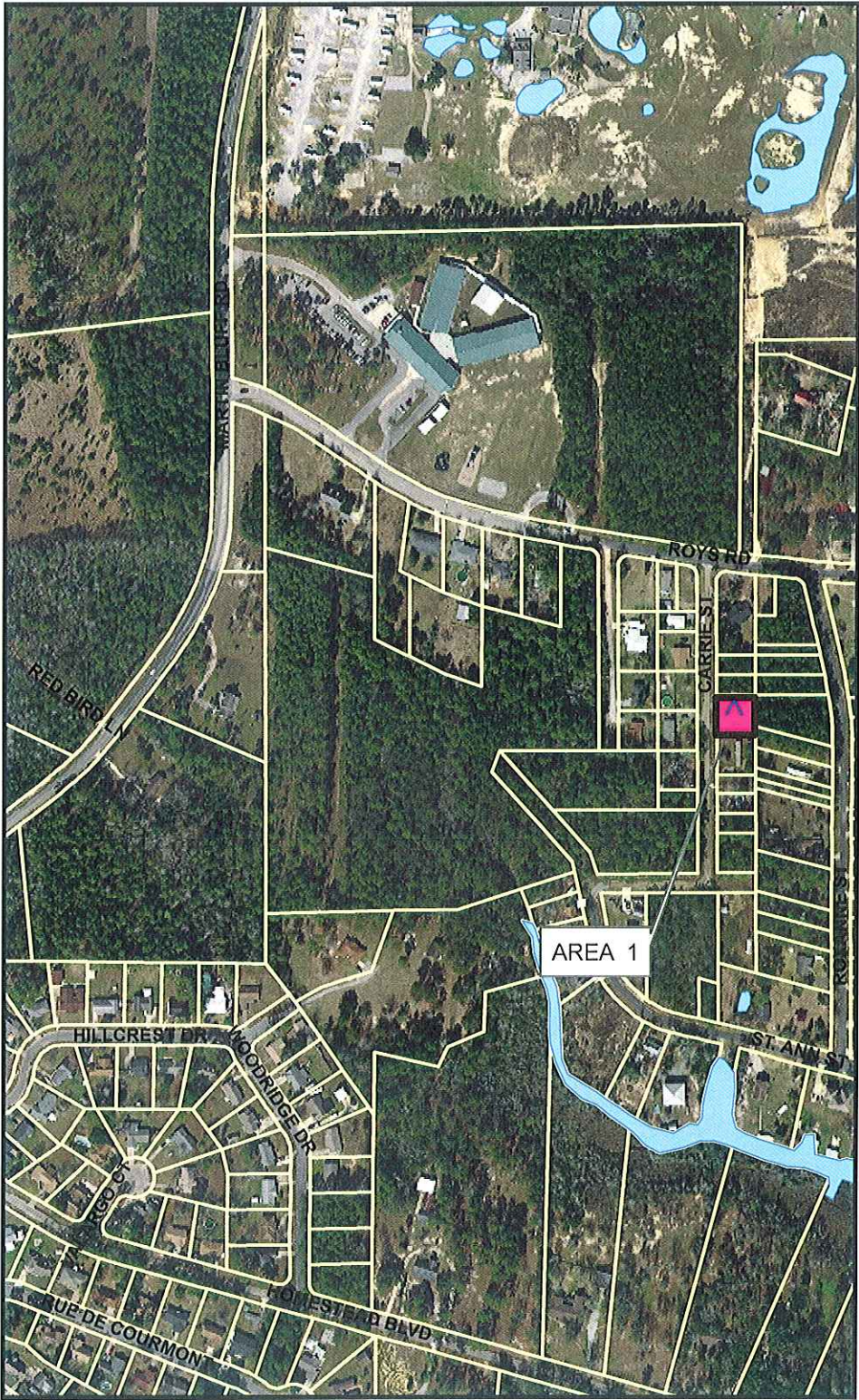
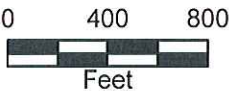


EXHIBIT B

Existing Zoning Map

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

Legend

- AG Agricultural
- PL Public/Semi-Public
- PUD Planned Unit Development
- R-1 Low Density Residential
- R-2 Multi-Family Residential
- R-3 Mobile Home District
- MUM
- TC
- MURC-1
- MURC-2
- MURC-MW
- C-1 Neighborhood Commercial
- C-2 Community Commercial
- C-3 Highway Commercial
- I-2 Industrial

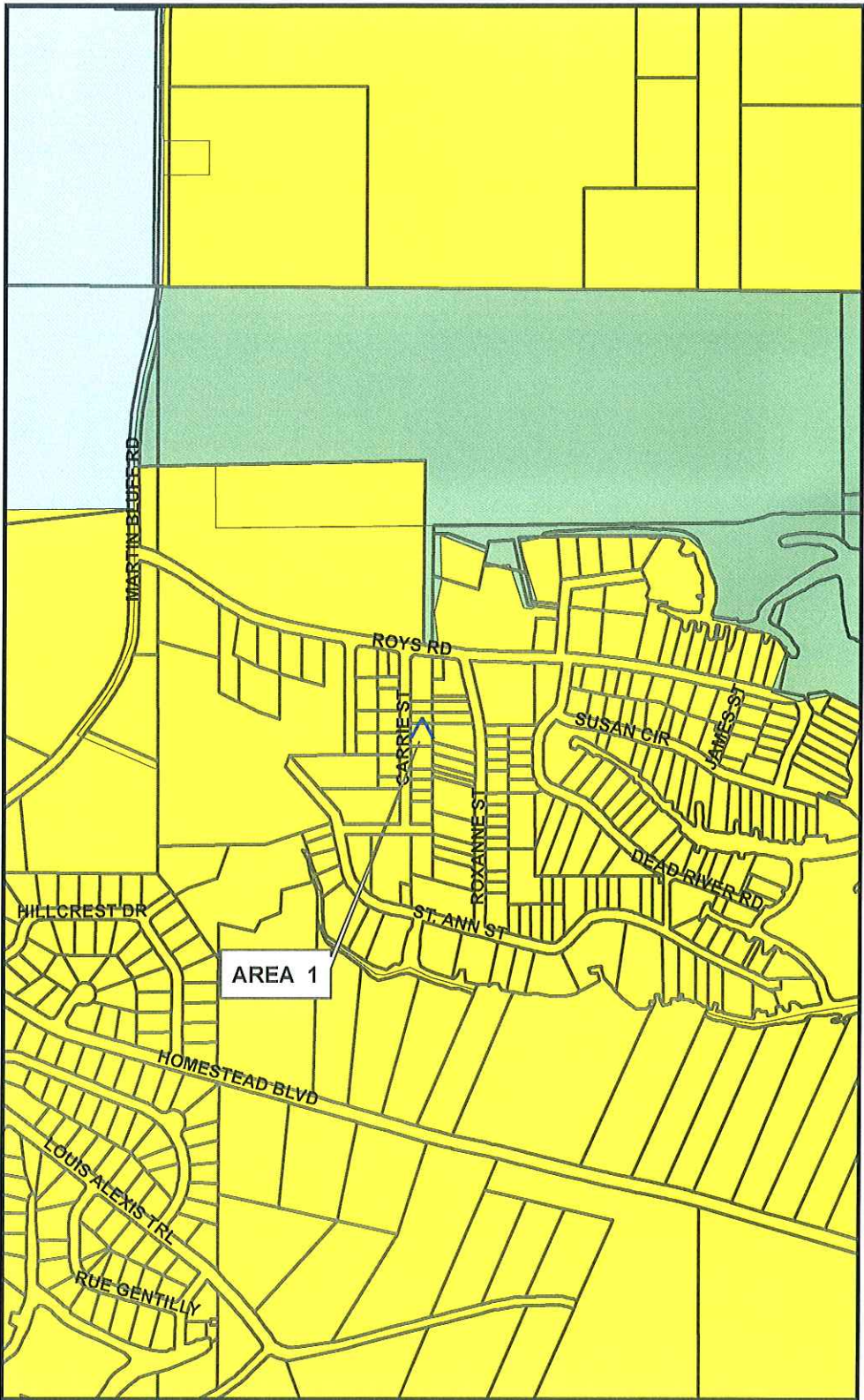
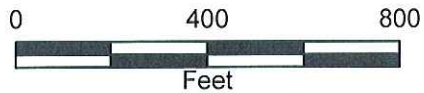


EXHIBIT C

Existing Land Use Map

City Of Gautier
Economic Development/Planning



4

Prepared by the
City of Gautier
GIS Division

Legend

EXISTING LAND USE

- Commercial-Retail
- Conservation
- Civic
- Industrial
- Marina/Fish Camps
- High Density Residential
- Mobile Home
- Mobile Home Park
- Medium Density Residential
- Office
- Recreation
- Very Low to Low Density Residential
- Utility
- Vacant

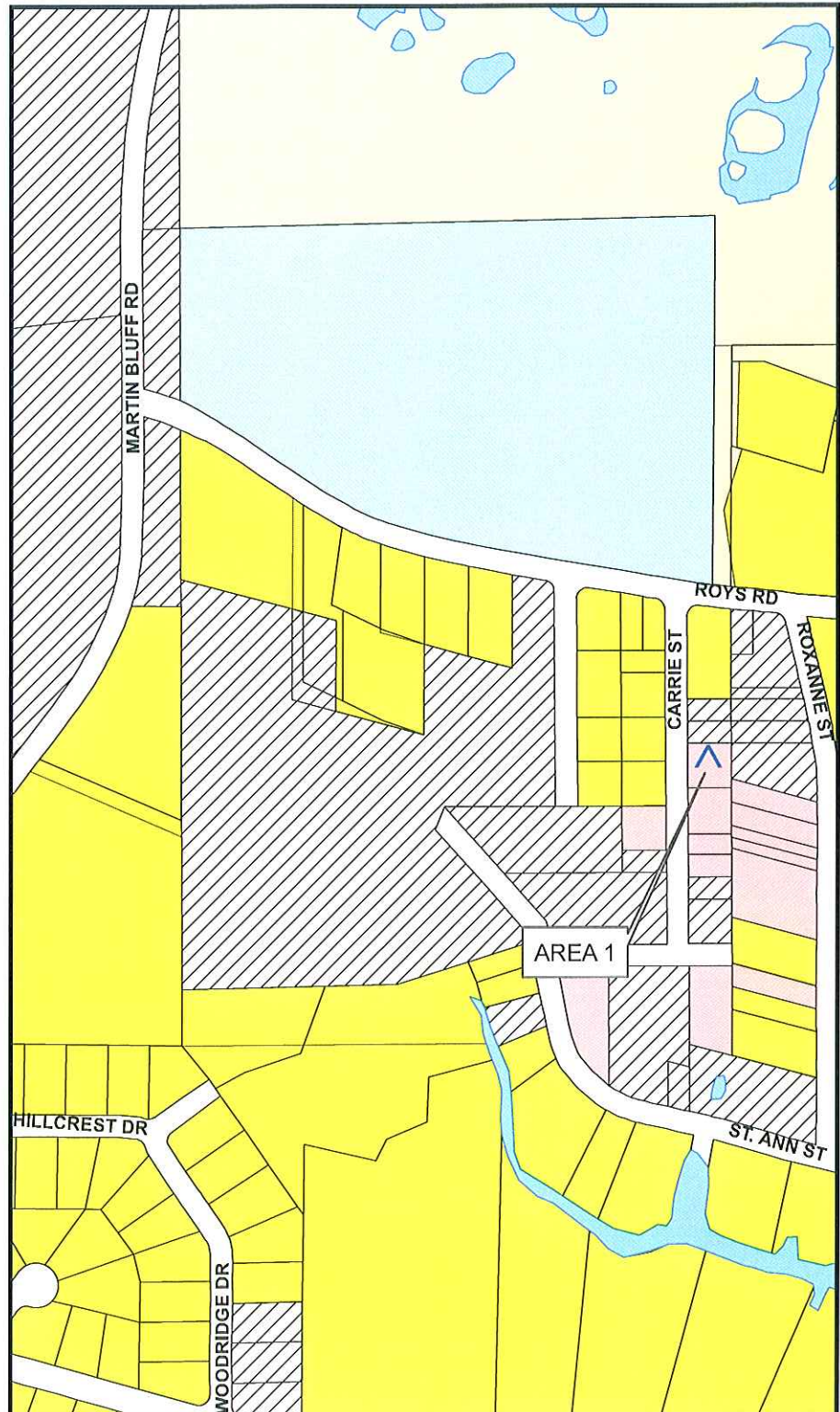


EXHIBIT D

Future Land Use Map

City Of Gautier
Economic Development/Planning



0 400 800
Feet

4

Prepared by the
City of Gautier
GIS Division

Legend

-  Civic
-  High Impact Commercial
-  Conservation
-  High Density Residential
-  Industrial
-  Low Density Residential
-  Medium Density Residential
-  Mobile Home Residential
-  Low Impact Commercial
-  Recreational
-  Recreational Commercial
-  Regional Scale Commercial
-  Mixed Use Residential
-  Town Center
-  Very Low Density Residential

